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Chapter No. 416
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HOUSE BILL NO. 387

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HOUSE BILL NO. 387

AN ACT TO PROVIDE THAT INCARCERATION SHALL NOT AUTOMATICALLY FOLLOW THE NONPAYMENT OF A FINE, RESTITUTION, OR COURT COSTS; TO PROVIDE THAT THE AGGREGATE TOTAL OF THE PERIOD OF INCARCERATION IMPOSED PURSUANT TO THIS SECTION AND THE TERM OF THE SENTENCE ORIGINALLY IMPOSED MAY NOT EXCEED THE MAXIMUM TERM OF IMPRISONMENT AUTHORIZED FOR THE OFFENSE; TO AMEND SECTIONS 99-19-20, 99-37-7 AND 47-1-1, MISSISSIPPI CODE OF 1972, IN CONFORMITY TO THE PRECEDING SECTIONS; TO AMEND SECTION 47-7-3, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT AN OTHERWISE INELIGIBLE INMATE FOR PAROLE SHALL BE ELIGIBLE FOR PAROLE IF AN INMATE HAS NOT BEEN CONVICTED OF COMMITTING A CRIME OF VIOLENCE, DRUG TRAFFICKING OR AS A HABITUAL OFFENDER AND HE OR SHE HAS SERVED AT LEAST 25% OF HIS OR HER SENTENCE; TO REQUIRE THE JOINT LEGISLATIVE COMMITTEE ON PERFORMANCE EVALUATION AND EXPENDITURE REVIEW TO CONDUCT A ONE-TIME CENSUS OF JAIL POPULATIONS THROUGHOUT THE STATE; TO CREATE THE MISSISSIPPI SENTENCING DISPARITY TASK FORCE; TO APPOINT THE MEMBERS TO THE TASK FORCE; TO AMEND SECTIONS 47-7-27 and 47-7-37, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT THE NUMBER OF PRIOR REVOCATIONS RATHER THAN THE NUMBER OF ALLEGED TECHNICAL VIOLATIONS SHALL BE CONSIDERED FOR PURPOSES OF REVOCATION SENTENCING; TO AMEND SECTION 99-19-81, MISSISSIPPI CODE OF 1972, TO REVISE SENTENCING OF CERTAIN OFFENDERS AS HABITUAL OFFENDERS; AND FOR RELATED PURPOSES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

SECTION 1. (1) Incarceration shall not automatically follow the nonpayment of a fine, restitution or court costs.

Incarceration may be employed only after the court has conducted a

hearing and examined the reasons for nonpayment and finds, on the record, that the defendant was not indigent or could have made payment but refused to do so. When determining whether a person is indigent, the court shall use the current Federal Poverty Guidelines and there shall be a presumption of indigence when a defendant's income is at or below one hundred twenty-five percent (125%) of the Federal Poverty Guidelines, subject to a review of his or her assets. A defendant at or below one hundred twenty-five percent (125%) of the Federal Poverty Guidelines without substantial liquid assets available to pay fines, fees, and costs shall be deemed indigent. In determining whether a defendant has substantial liquid assets, the judge shall not consider up to Ten Thousand Dollars ($10,000.00) in tangible personal property, including motor vehicles, household goods, or any other assets exempted from seizure under execution or attachment as provided under Section 85-3-1. If the defendant is above one hundred twenty-five percent (125%) of the Federal Poverty Guidelines, the judge shall make an individualized assessment of his or her ability to pay based on the totality of the circumstances including, but not limited to, the defendant's disposable income, financial obligations and liquid assets. If the judge determines that a defendant who claims indigence is not indigent and the defendant could have made payment but refused to do so, the case file shall include a written explanation of the basis for the determination of the judge. In justice and

municipal court, such finding shall be included in the court's order.

(2) If it appears to the satisfaction of the court that nonpayment is not willful, the court shall enter an order that allows the defendant additional time for payment, reduces the amount of each installment, revokes the fine, in whole or in part, or allows the defendant to perform community service at the state minimum wage per hour rate. If the court finds nonpayment is willful after consideration of the defendant's situation, means, and conduct with regard to the nonpayment, the court shall determine the period of incarceration, if any, subject to the limitations set by law and subsection (3) of this section.

(3) If at the time the fine, restitution or court cost is ordered, a sentence of incarceration is also imposed, the aggregate total of the period of incarceration imposed pursuant to this section and the term of the sentence originally imposed may not exceed the maximum term of imprisonment authorized for the offense.

(4) A minor who is to serve as a confidential informant must be notified that the minor has the right to contact one (1) or both parents.

SECTION 2. Section 99-19-20, Mississippi Code of 1972, is amended as follows:

99-19-20. (1) <u>Except as otherwise provided under Section 1 of this act,</u> when any court sentences a defendant to pay a fine,

the court may order (a) that the fine be paid immediately, or (b) that the fine be paid in installments to the clerk of * * * the court or to the judge, if there be no clerk, or (c) that payment of the fine be a condition of probation, or (d) that the defendant be required to work on public property for public benefit under the direction of the sheriff for a specific number of hours, or (e) any combination of the above.

(2) Except as otherwise provided under Section 1 of this act, the defendant may be imprisoned until the fine is paid if the defendant is financially able to pay a fine and the court so finds, subject to the limitations * * * provided under this section. The defendant shall not be imprisoned if the defendant is financially unable to pay a fine and so states to the court in writing, under oath, after sentence is pronounced, and the court so finds, except if the defendant is financially unable to pay a fine and such defendant failed or refused to comply with a prior sentence as specified in subsection (1) of this section, the defendant may be imprisoned.

This subsection shall be limited as follows:

(a) In no event shall such period of imprisonment exceed one (1) day for each * * * One Hundred Dollars ($100.00) of the fine. * * *

(b) If a sentence of imprisonment, as well as a fine, were imposed, the aggregate of such term for nonpayment of a fine

and the original sentence of imprisonment shall not exceed the maximum authorized term of imprisonment.

(c) It shall be in the discretion of the judge to determine the rate of the credit to be earned for work performed under subsection (1)(d), but the rate shall be no lower than the rate of the highest current federal minimum wage.

(3) Periods of confinement imposed for nonpayment of two (2) or more fines shall run consecutively unless specified by the court to run concurrently.

SECTION 3. Section 99-37-7, Mississippi Code of 1972, is amended as follows:

99-37-7. (1) Subject to the provisions of Section 1 of this act, when a defendant sentenced to pay a fine or to make restitution defaults in the payment thereof or of any installment, the court, on motion of the district attorney, or upon its own motion, may require him to show cause why his default should not be treated as contempt of court, and may issue a show cause citation or a warrant of arrest for his appearance.

(2) Subject to the provisions of Section 1 of this act, unless the defendant shows that his default was not attributable to an intentional refusal to obey the order of the court or to a failure on his part to make a good faith effort to make the payment, the court may find that his default constitutes contempt and may order him committed until the fine or the restitution, or a specified part thereof, is paid.

(3) A judicial officer shall not be held criminally or civilly liable for failure of any defendant to pay any fine or to make restitution if the officer exercises his judicial authority in accordance with subsections (1) and (2) of this section to require the payment of such fine or restitution.

(4) When a fine or an order of restitution is imposed on a corporation or unincorporated association, it is the duty of the person authorized to make disbursement from the assets of the corporation or association to pay the fine or make the restitution from those assets, and his failure to do so may be held to be contempt unless he makes the showing required in subsection (2) of this section.

SECTION 4. Section 47-1-1, Mississippi Code of 1972, is amended as follows:

47-1-1. Every convict sentenced to imprisonment in the county jail, or to such imprisonment and the payment of a fine, or the payment of a fine, shall be committed to jail, and shall remain in close confinement for the full time specified for imprisonment in the sentence of the court, and in like confinement, subject to the provisions of Section 1 of this act, until the fine, costs and jail fees be fully paid, unless discharged in due course of law, or as hereinafter provided. * * * Subject to the provisions of Section 1 of this act, no convict shall be held in continuous confinement under a conviction for any

one (1) offense for failure to pay fine and costs in such case for a period of more than * * * one (1) year.

SECTION 5. Section 47-7-3, Mississippi Code of 1972, is amended as follows:

47-7-3. (1) Every prisoner who has been convicted of any offense against the State of Mississippi, and is confined in the execution of a judgment of such conviction in the Mississippi Department of Corrections for a definite term or terms of one (1) year or over, or for the term of his or her natural life, whose record of conduct shows that such prisoner has observed the rules of the department, and who has served not less than one-fourth (1/4) of the total of such term or terms for which such prisoner was sentenced, or, if sentenced to serve a term or terms of thirty (30) years or more, or, if sentenced for the term of the natural life of such prisoner, has served not less than ten (10) years of such life sentence, may be released on parole as hereinafter provided, except that:

(a) No prisoner convicted as a confirmed and habitual criminal under the provisions of Sections 99-19-81 through 99-19-87 shall be eligible for parole;

(b) Any person who shall have been convicted of a sex crime shall not be released on parole except for a person under the age of nineteen (19) who has been convicted under Section 97-3-67;

(c) (i) No person shall be eligible for parole who shall, on or after January 1, 1977, be convicted of robbery or attempted robbery through the display of a firearm until he shall have served ten (10) years if sentenced to a term or terms of more than ten (10) years or if sentenced for the term of the natural life of such person. If such person is sentenced to a term or terms of ten (10) years or less, then such person shall not be eligible for parole. The provisions of this paragraph (c)(i) shall also apply to any person who shall commit robbery or attempted robbery on or after July 1, 1982, through the display of a deadly weapon. This paragraph (c)(i) shall not apply to persons convicted after September 30, 1994;

(ii) No person shall be eligible for parole who shall, on or after October 1, 1994, be convicted of robbery, attempted robbery or carjacking as provided in Section 97-3-115 et seq., through the display of a firearm or drive-by shooting as provided in Section 97-3-109. The provisions of this paragraph (c)(ii) shall also apply to any person who shall commit robbery, attempted robbery, carjacking or a drive-by shooting on or after October 1, 1994, through the display of a deadly weapon. This paragraph (c)(ii) shall not apply to persons convicted after July 1, 2014;

(d) No person shall be eligible for parole who, on or after July 1, 1994, is charged, tried, convicted and sentenced to

life imprisonment without eligibility for parole under the provisions of Section 99-19-101;

(e) No person shall be eligible for parole who is charged, tried, convicted and sentenced to life imprisonment under the provisions of Section 99-19-101;

(f) No person shall be eligible for parole who is convicted or whose suspended sentence is revoked after June 30, 1995, except that an offender convicted of only nonviolent crimes after June 30, 1995, may be eligible for parole if the offender meets the requirements in subsection (1) and this paragraph. In addition to other requirements, if an offender is convicted of a drug or driving under the influence felony, the offender must complete a drug and alcohol rehabilitation program prior to parole or the offender may be required to complete a post-release drug and alcohol program as a condition of parole. For purposes of this paragraph, "nonviolent crime" means a felony other than homicide, robbery, manslaughter, sex crimes, arson, burglary of an occupied dwelling, aggravated assault, kidnapping, felonious abuse of vulnerable adults, felonies with enhanced penalties, <u>except enhanced penalties for the crime of possession of a controlled substance under Section 41-29-147,</u> the sale or manufacture of a controlled substance under the Uniform Controlled Substances Law, felony child abuse, or exploitation or any crime under Section 97-5-33 or Section 97-5-39(2) or 97-5-39(1)(b), 97-5-39(1)(c) or a violation of Section 63-11-30(5). In addition, an offender

incarcerated for committing the crime of possession of a controlled substance under the Uniform Controlled Substances Law after July 1, 1995, including an offender who receives an enhanced penalty under the provisions of Section 41-29-147 for such possession, shall be eligible for parole. An offender incarcerated for committing the crime of sale or manufacture of a controlled substance shall be eligible for parole after serving one-fourth (1/4) of the sentence imposed by the trial court. This paragraph (f) shall not apply to persons convicted on or after July 1, 2014;

(g) (i) No person who, on or after July 1, 2014, is convicted of a crime of violence pursuant to Section 97-3-2, a sex crime or an offense that specifically prohibits parole release, shall be eligible for parole. All persons convicted of any other offense on or after July 1, 2014, are eligible for parole after they have served one-fourth (1/4) of the sentence or sentences imposed by the trial court.

(ii) Notwithstanding the provisions in paragraph (i) of this subsection, a person serving a sentence who has reached the age of sixty (60) or older and who has served no less than ten (10) years of the sentence or sentences imposed by the trial court shall be eligible for parole. Any person eligible for parole under this subsection shall be required to have a parole hearing before the board prior to parole release. No inmate shall be eligible for parole under this paragraph of this subsection if:

1. The inmate is sentenced as a habitual offender under Sections 99-19-81 through 99-19-87;

2. The inmate is sentenced for a crime of violence under Section 97-3-2;

3. The inmate is sentenced for an offense that specifically prohibits parole release;

4. The inmate is sentenced for trafficking in controlled substances under Section 41-29-139(f);

5. The inmate is sentenced for a sex crime; or

6. The inmate has not served one-fourth (1/4) of the sentence imposed by the court.

(iii) Notwithstanding the provisions of paragraph * * * (a) of this subsection, any offender who has not committed a crime of violence under Section 97-3-2 and has served twenty-five percent (25%) or more of his sentence may be paroled by the parole board if, after the sentencing judge or if the sentencing judge is retired, disabled or incapacitated, the senior circuit judge authorizes the offender to be eligible for parole consideration.

(h) Notwithstanding any other provision of law, an inmate who has not been convicted as a habitual offender under Sections 99-19-81 through 99-19-87, has not been convicted of committing a crime of violence, as defined under Section 97-3-2, has not been convicted of a sex crime or any other crime that

specifically prohibits parole release, and has not been convicted of drug trafficking under Section 41-29-139 is eligible for parole if the inmate has served twenty-five percent (25%) or more of his or her sentence, but is otherwise ineligible for parole.

(2) Notwithstanding any other provision of law, an inmate shall not be eligible to receive earned time, good time or any other administrative reduction of time which shall reduce the time necessary to be served for parole eligibility as provided in subsection (1) of this section.

(3) The State Parole Board shall, by rules and regulations, establish a method of determining a tentative parole hearing date for each eligible offender taken into the custody of the Department of Corrections. The tentative parole hearing date shall be determined within ninety (90) days after the department has assumed custody of the offender. The parole hearing date shall occur when the offender is within thirty (30) days of the month of his parole eligibility date. The parole eligibility date shall not be earlier than one-fourth (1/4) of the prison sentence or sentences imposed by the court.

(4) Any inmate within twenty-four (24) months of his parole eligibility date and who meets the criteria established by the classification board shall receive priority for placement in any educational development and job training programs that are part of his or her parole case plan. Any inmate refusing to participate in an educational development or job training program that is part

of the case plan may be in jeopardy of noncompliance with the case plan and may be denied parole.

SECTION 6. Any person who supervises an individual placed on parole by the Parole Board or placed on probation by the court shall set the times and locations for meetings that are required for parole or probation at such times and locations that are reasonably designed to accommodate the work schedule of an individual on parole or probation who is employed by another person or entity. To effectuate the provisions of this section, the parole officer or probation officer may utilize technology portals such as Skype, FaceTime or Google video chat, or any other technology portal that allows communication between the individual on parole or probation and the parole or probation officer, as applicable, to occur simultaneously in real time by voice and video in lieu of requiring a face-to-face in person meeting of such individual and the parole or probation officer, as applicable. For individuals who are self-employed, the provisions of this section shall only apply with the agreement of their supervising parole or probation officer.

SECTION 7. (1) The Joint Legislative Committee on Performance Evaluation and Expenditure Review (PEER) shall conduct a one-time census of populations in juvenile detention centers and in county and municipal jails in the State of Mississippi. The data collected shall reflect the populations at a given date or date range, as determined by PEER. The following data shall be

collected and aggregated by individual facility, as well as by inmate or detainee characteristics, including race, gender, and adult or juvenile status:

(a) The number of individuals detained for a new offense or delinquent act.

(b) The number of individuals detained for pretrial.

(c) The number of offenders detained for a revocation of supervision.

(d) The average sentence length for new jail sentences by offense type.

(e) The average sentence length for offenders in jail for a probation revocation.

(f) The average sentence length for offenders in jail for a parole revocation.

(g) The percentage of sentences in each category offense type, including whether the offense was violent, property, drug, or public order. All drug offenses shall include the type of drug implicated in the offense, as well as type of offense, such as possession, sale or manufacture.

(h) The average length of stay by offense type.

(i) For individuals awaiting trial, the average length of stay from the time of their arrest to the time of indictment, and from the time of indictment to trial.

(2) PEER shall also make recommendations to the Legislature for a reporting mechanism that would facilitate the regular

reporting of this information to the Legislature to guide policymaking decisions.

(3) This report shall be provided to the Legislature by no later than November 30, 2018.

SECTION 8. (1) There is created the Mississippi Sentencing Disparity Task Force. The purpose of the task force is to study and report the existence of possible disparity in sentencing for crimes as documented by the Mississippi Department of Corrections in order to promote the interest of uniform justice throughout the State of Mississippi.

(2) The Mississippi Sentencing Disparity Task Force shall be composed of the following fourteen (14) members, who shall serve for two-year terms:

(a) Two (2) members of the Mississippi House of Representatives, appointed by the Speaker of the House;

(b) Two (2) members of the Mississippi State Senate, appointed by the Lieutenant Governor;

(c) Two (2) members appointed by the Governor;

(d) The Commissioner of the Mississippi Department of Corrections, or a designee;

(e) The Attorney General of the State of Mississippi, or his or her designee;

(f) The director of a faith-based organization involved in re-entry programs, or a designee appointed by the Lieutenant Governor;

(g) The Chief Justice of the Mississippi Supreme Court, or a designee;

(h) The Chairman of the Parole Board, or a designee;

(i) A person who is a former offender appointed by the Chairman of the Parole Board;

(j) The President of the Mississippi Prosecutors Association, or a designee; and

(k) A sentencing circuit or county court judge, or a designee to be appointed by the Chief Justice of the Mississippi Supreme Court.

(3) The Chief Justice of the Mississippi Supreme Court shall call the first meeting of the task force. The task force shall hold its first meeting no later than thirty (30) days after the effective date of this act. At its first meeting, the task force shall elect a chairman and vice chairman from its membership and adopt rules for transacting its business and keeping records. The chairman and vice chairman shall serve one-year terms or until such time as a successor is elected.

SECTION 9. Upon the request of any county for eligible inmates, the Department of Corrections shall make available for participation in the state-county work program in the requesting county any eligible inmates. Upon request and approval of such request by the Department of Corrections, the requesting county shall arrange for transportation of such inmates from the Department of Corrections to such county. Upon receiving any

inmates, the county shall be responsible for all expenses related to housing and caring for such inmates. The Department of Corrections shall not be obligated to pay the county for any costs associated with housing or caring for such inmates, while the inmates are in the custody of the county for the purposes of the state-county work program. Regardless of any eligibility criteria established by the Department of Corrections, no inmate convicted of a sex crime, a crime of violence as defined by Section 97-3-2, or any other crime which specifically prohibits parole shall be eligible for participation in the program. The requesting county may, in its sole discretion, refuse any inmate deemed to present an undue risk to such county.

SECTION 10. Section 47-7-27, Mississippi Code of 1972, is amended as follows:

47-7-27. (1) The board may, at any time and upon a showing of probable violation of parole, issue a warrant for the return of any paroled offender to the custody of the department. The warrant shall authorize all persons named therein to return the paroled offender to actual custody of the department from which he was paroled.

(2) Any field supervisor may arrest an offender without a warrant or may deputize any other person with power of arrest by giving him a written statement setting forth that the offender has, in the judgment of that field supervisor, violated the conditions of his parole or earned-release supervision. The

written statement delivered with the offender by the arresting officer to the official in charge of the department facility from which the offender was released or other place of detention designated by the department shall be sufficient warrant for the detention of the offender.

(3) The field supervisor, after making an arrest, shall present to the detaining authorities a similar statement of the circumstances of violation. The field supervisor shall at once notify the board or department of the arrest and detention of the offender and shall submit a written report showing in what manner the offender has violated the conditions of parole or earned-release supervision. An offender for whose return a warrant has been issued by the board shall, after the issuance of the warrant, be deemed a fugitive from justice.

(4) Whenever an offender is arrested on a warrant for an alleged violation of parole as herein provided, the board shall hold an informal preliminary hearing within seventy-two (72) hours to determine whether there is reasonable cause to believe the person has violated a condition of parole. A preliminary hearing shall not be required when the offender is not under arrest on a warrant or the offender signed a waiver of a preliminary hearing. The preliminary hearing may be conducted electronically.

(5) The right of the State of Mississippi to extradite persons and return fugitives from justice, from other states to this state, shall not be impaired by this chapter and shall remain

in full force and effect. An offender convicted of a felony committed while on parole, whether in the State of Mississippi or another state, shall immediately have his parole revoked upon presentment of a certified copy of the commitment order to the board. If an offender is on parole and the offender is convicted of a felony for a crime committed prior to the offender being placed on parole, whether in the State of Mississippi or another state, the offender may have his parole revoked upon presentment of a certified copy of the commitment order to the board.

(6) (a) The board shall hold a hearing for any parolee who is detained as a result of a warrant or a violation report within twenty-one (21) days of the parolee's admission to detention. The board may, in its discretion, terminate the parole or modify the terms and conditions thereof. If the board revokes parole for * * * one or more technical violations the board shall impose a period of imprisonment to be served in a technical violation center operated by the department not to exceed ninety (90) days for the first * * * revocation and not to exceed one hundred twenty (120) days for the second * * * revocation. For the third * * * revocation, the board may impose a period of imprisonment to be served in a technical violation center for up to one hundred and eighty (180) days or the board may impose the remainder of the suspended portion of the sentence. For the fourth and any subsequent * * * revocation, the board may impose up to the remainder of the suspended portion of the sentence. The

period of imprisonment in a technical violation center imposed under this section shall not be reduced in any manner.

(b) If the board does not hold a hearing or does not take action on the violation within the twenty-one-day time frame in paragraph (a) of this subsection, the parolee shall be released from detention and shall return to parole status. The board may subsequently hold a hearing and may revoke parole or may continue parole and modify the terms and conditions of parole. If the board revokes parole for * * * one or more technical violations the board shall impose a period of imprisonment to be served in a technical violation center operated by the department not to exceed ninety (90) days for the first * * * revocation and not to exceed one hundred twenty (120) days for the second * * * revocation. For the third * * * revocation, the board may impose a period of imprisonment to be served in a technical violation center for up to one hundred eighty (180) days or the board may impose the remainder of the suspended portion of the sentence. For the fourth and any subsequent * * * revocation, the board may impose up to the remainder of the suspended portion of the sentence. The period of imprisonment in a technical violation center imposed under this section shall not be reduced in any manner.

(c) For a parolee charged with * * * one or more technical violations who has not been detained awaiting the revocation hearing, the board may hold a hearing within a

reasonable time. The board may revoke parole or may continue parole and modify the terms and conditions of parole. If the board revokes parole for * * * one or more technical violations the board shall impose a period of imprisonment to be served in a technical violation center operated by the department not to exceed ninety (90) days for the first * * * revocation and not to exceed one hundred twenty (120) days for the second * * * revocation. For the third * * * revocation, the board may impose a period of imprisonment to be served in a technical violation center for up to one hundred eighty (180) days or the board may impose the remainder of the suspended portion of the sentence. For the fourth and any subsequent * * * revocation, the board may impose up to the remainder of the suspended portion of the sentence. The period of imprisonment in a technical violation center imposed under this section shall not be reduced in any manner.

(7) Unless good cause for the delay is established in the record of the proceeding, the parole revocation charge shall be dismissed if the revocation hearing is not held within the thirty (30) days of the issuance of the warrant.

(8) The chairman and each member of the board and the designated parole revocation hearing officer may, in the discharge of their duties, administer oaths, summon and examine witnesses, and take other steps as may be necessary to ascertain the truth of any matter about which they have the right to inquire.

(9) The board shall provide semiannually to the Oversight Task Force the number of warrants issued for an alleged violation of parole, the average time between detention on a warrant and preliminary hearing, the average time between detention on a warrant and revocation hearing, the number of ninety-day sentences in a technical violation center issued by the board, the number of one-hundred-twenty-day sentences in a technical violation center issued by the board, the number of one-hundred-eighty-day sentences issued by the board, and the number and average length of the suspended sentences imposed by the board in response to a violation.

SECTION 11. Section 47-7-37, Mississippi Code of 1972, is amended as follows:

47-7-37. (1) The period of probation shall be fixed by the court, and may at any time be extended or terminated by the court, or judge in vacation. Such period with any extension thereof shall not exceed five (5) years, except that in cases of desertion and/or failure to support minor children, the period of probation may be fixed and/or extended by the court for so long as the duty to support such minor children exists. The time served on probation or post-release supervision may be reduced pursuant to Section 47-7-40.

(2) At any time during the period of probation, the court, or judge in vacation, may issue a warrant for violating any of the conditions of probation or suspension of sentence and cause the

probationer to be arrested. Any probation and parole officer may arrest a probationer without a warrant, or may deputize any other officer with power of arrest to do so by giving him a written statement setting forth that the probationer has, in the judgment of the probation and parole officer, violated the conditions of probation. Such written statement delivered with the probationer by the arresting officer to the official in charge of a county jail or other place of detention shall be sufficient warrant for the detention of the probationer.

(3) Whenever an offender is arrested on a warrant for an alleged violation of probation as herein provided, the department shall hold an informal preliminary hearing within seventy-two (72) hours of the arrest to determine whether there is reasonable cause to believe the person has violated a condition of probation. A preliminary hearing shall not be required when the offender is not under arrest on a warrant or the offender signed a waiver of a preliminary hearing. The preliminary hearing may be conducted electronically. If reasonable cause is found, the offender may be confined no more than twenty-one (21) days from the admission to detention until a revocation hearing is held. If the revocation hearing is not held within twenty-one (21) days, the probationer shall be released from custody and returned to probation status.

(4) If a probationer or offender is subject to registration as a sex offender, the court must make a finding that the probationer or offender is not a danger to the public prior to

release with or without bail. In determining the danger posed by the release of the offender or probationer, the court may consider the nature and circumstances of the violation and any new offenses charged; the offender or probationer's past and present conduct, including convictions of crimes and any record of arrests without conviction for crimes involving violence or sex crimes; any other evidence of allegations of unlawful sexual conduct or the use of violence by the offender or probationer; the offender or probationer's family ties, length of residence in the community, employment history and mental condition; the offender or probationer's history and conduct during the probation or other supervised release and any other previous supervisions, including disciplinary records of previous incarcerations; the likelihood that the offender or probationer will engage again in a criminal course of conduct; the weight of the evidence against the offender or probationer; and any other facts the court considers relevant.

(5) (a) The probation and parole officer after making an arrest shall present to the detaining authorities a similar statement of the circumstances of violation. The probation and parole officer shall at once notify the court of the arrest and detention of the probationer and shall submit a report in writing showing in what manner the probationer has violated the conditions of probation. Within twenty-one (21) days of arrest and detention by warrant as herein provided, the court shall cause the probationer to be brought before it and may continue or revoke all

or any part of the probation or the suspension of sentence. If the court revokes probation for * * * one or more technical violations, the court shall impose a period of imprisonment to be served in either a technical violation center or a restitution center not to exceed ninety (90) days for the first * * * revocation and not to exceed one hundred twenty (120) days for the second * * * revocation. For the third * * * revocation, the court may impose a period of imprisonment to be served in either a technical violation center or a restitution center for up to one hundred eighty (180) days or the court may impose the remainder of the suspended portion of the sentence. For the fourth and any subsequent * * * revocation, the court may impose up to the remainder of the suspended portion of the sentence. The period of imprisonment in a technical violation center imposed under this section shall not be reduced in any manner.

(b) If the offender is not detained as a result of the warrant, the court shall cause the probationer to be brought before it within a reasonable time and may continue or revoke all or any part of the probation or the suspension of sentence, and may cause the sentence imposed to be executed or may impose any part of the sentence which might have been imposed at the time of conviction. If the court revokes probation for * * * one or more technical violations, the court shall impose a period of imprisonment to be served in either a technical violation center or a restitution center not to exceed ninety (90) days for the

first * * * revocation and not to exceed one hundred twenty (120) days for the second * * * revocation. For the third * * * revocation, the court may impose a period of imprisonment to be served in either a technical violation center or a restitution center for up to one hundred eighty (180) days or the court may impose the remainder of the suspended portion of the sentence. For the fourth and any subsequent * * * revocation, the court may impose up to the remainder of the suspended portion of the sentence. The period of imprisonment in a technical violation center imposed under this section shall not be reduced in any manner.

(c) If the court does not hold a hearing or does not take action on the violation within the twenty-one-day period, the offender shall be released from detention and shall return to probation status. The court may subsequently hold a hearing and may revoke probation or may continue probation and modify the terms and conditions of probation. If the court revokes probation for * * * one or more technical violations, the court shall impose a period of imprisonment to be served in either a technical violation center operated by the department or a restitution center not to exceed ninety (90) days for the first * * * revocation and not to exceed one hundred twenty (120) days for the second * * * revocation. For the third * * * revocation, the court may impose a period of imprisonment to be served in either a technical violation center or a restitution center for up to one

hundred * * * eighty (180) days or the court may impose the remainder of the suspended portion of the sentence. For the fourth and any subsequent * * * revocation, the court may impose up to the remainder of the suspended portion of the sentence. The period of imprisonment in a technical violation center imposed under this section shall not be reduced in any manner.

(d) For an offender charged with a technical violation who has not been detained awaiting the revocation hearing, the court may hold a hearing within a reasonable time. The court may revoke probation or may continue probation and modify the terms and conditions of probation. If the court revokes probation for * * * one or more technical violations the court shall impose a period of imprisonment to be served in either a technical violation center operated by the department or a restitution center not to exceed ninety (90) days for the first * * * revocation and not to exceed one hundred twenty (120) days for the second * * * revocation. For the third * * * revocation, the court may impose a period of imprisonment to be served in either a technical violation center or a restitution center for up to one hundred eighty (180) days or the court may impose the remainder of the suspended portion of the sentence. For the fourth and any subsequent * * * revocation, the court may impose up to the remainder of the suspended portion of the sentence. The period of imprisonment in a technical violation center imposed under this section shall not be reduced in any manner.

(6) If the probationer is arrested in a circuit court district in the State of Mississippi other than that in which he was convicted, the probation and parole officer, upon the written request of the sentencing judge, shall furnish to the circuit court or the county court of the county in which the arrest is made, or to the judge of such court, a report concerning the probationer, and such court or the judge in vacation shall have authority, after a hearing, to continue or revoke all or any part of probation or all or any part of the suspension of sentence, and may in case of revocation proceed to deal with the case as if there had been no probation. In such case, the clerk of the court in which the order of revocation is issued shall forward a transcript of such order to the clerk of the court of original jurisdiction, and the clerk of that court shall proceed as if the order of revocation had been issued by the court of original jurisdiction. Upon the revocation of probation or suspension of sentence of any offender, such offender shall be placed in the legal custody of the State Department of Corrections and shall be subject to the requirements thereof.

(7) Any probationer who removes himself from the State of Mississippi without permission of the court placing him on probation, or the court to which jurisdiction has been transferred, shall be deemed and considered a fugitive from justice and shall be subject to extradition as now provided by law. No part of the time that one is on probation shall be

considered as any part of the time that he shall be sentenced to serve.

(8) The arresting officer, except when a probation and parole officer, shall be allowed the same fees as now provided by law for arrest on warrant, and such fees shall be taxed against the probationer and paid as now provided by law.

(9) The arrest, revocation and recommitment procedures of this section also apply to persons who are serving a period of post-release supervision imposed by the court.

(10) Unless good cause for the delay is established in the record of the proceeding, the probation revocation charge shall be dismissed if the revocation hearing is not held within thirty (30) days of the warrant being issued.

(11) The Department of Corrections shall provide semiannually to the Oversight Task Force the number of warrants issued for an alleged violation of probation or post-release supervision, the average time between detention on a warrant and preliminary hearing, the average time between detention on a warrant and revocation hearing, the number of ninety-day sentences in a technical violation center issued by the court, the number of one-hundred-twenty-day sentences in a technical violation center issued by the court, the number of one-hundred-eighty-day sentences issued by the court, and the number and average length of the suspended sentences imposed by the court in response to a violation.

SECTION 12. Section 99-19-81, Mississippi Code of 1972, is amended as follows:

99-19-81. Every person convicted in this state of a felony who shall have been convicted twice previously of any felony or federal crime upon charges separately brought and arising out of separate incidents at different times and who shall have been sentenced to separate terms of one (1) year or more in any state and/or federal penal institution, whether in this state or elsewhere, shall be sentenced to the maximum term of imprisonment prescribed for such felony unless the court provides an explanation in its sentencing order setting forth the cause for deviating from the maximum sentence, and such sentence shall not be reduced or suspended nor shall such person be eligible for parole or probation.

SECTION 13. This act shall take effect and be in force from and after July 1, 2018.

PASSED BY THE HOUSE OF REPRESENTATIVES
January 31, 2018

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PASSED BY THE SENATE
March 7, 2018

PRESIDENT OF THE SENATE

APPROVED BY THE GOVERNOR

GOVERNOR

March 26, 2018
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